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Seattle, WA Police Dept. – *Proposed* - Methodology

July 29, 2019

**Background**

The Court's May 21, 2019 Order directs "the City and the United States, with the assistance of the Monitor and the CPC, to formulate a methodology (1) for assessing the present accountability regime, and (2) for how the City proposes to achieve compliance." The methodology is due to the Court by August 15, 2019. In June, the City met with DOJ, CPC, and Monitor to discuss the engagement of 21CP and the possible scope of work. At the end of June, 21CP conducted an initial two-day site visit to Seattle and met with representatives of DOJ, SPD, CPC, Monitor, OPA, and OIG. Subsequently, in July, 21CP conducted a second two-day site visit and met with the full CPC commission, monitoring team, and other community organizations. A half-day work session with the parties, CPC and Monitor, OPA and OIG also occurred during the second site visit. This proposed methodology is the result of an inclusive process that spanned two months and involved eleven meetings or calls with 21CP and City stakeholders, including eight meetings or calls with the Monitor, and seven meetings or calls with CPC staff or Commissioners.

**Overview**

This assessment will evaluate the current accountability system, by taking into account survey results of comparably sized jurisdictions and site visits, relevant provisions in current state and local law and collective bargaining agreements, and determine whether and to what extent attributes of the current system are aligned and operate as designed as it relates to holding officers accountability for serious misconduct in a manner that is meaningful and procedurally fair.

*21CP recognizes that a broad range of stakeholders have been and continue to be heavily invested in building an accountability system that is effective, fair and transparent. This assessment is not an attempt to undo the hard work and countless hours that have been dedicated to this effort.*

**Accountability & Disciplinary Appeal Assessment Survey**

The purpose of this project part is to conduct research on best practices, and evaluate the City of Seattle systems, related to accountability, discipline appeals, and arbitration. This will include identifying comparable jurisdictions, developing a survey instrument, administering the survey to comparable agencies, reviewing developing trends, analyzing best practices around arbitrator vetting/credentialing, and other efforts required for a comprehensive review of the topic.

1. 21CP will develop a survey instrument designed to capture information about comparable agency disciplinary appeal processes. The primary focus of the survey will be on discipline appeal procedures in comparably sized jurisdictions in the United States. 21CP is developing survey questions through review of documents as well as meetings and work sessions with Seattle stakeholders. At the outset, 21CP projects that the discipline appeals process survey will be seeking a range of information from respondents, including:

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- a. Whether jurisdiction of agency allows for peace officer collective bargaining.
    - b. Type of process (e.g. arbitration, civil service board, circuit or similar court review) – including any limitations on reviewable classes of discipline (suspension, demotion, termination).
    - c. Adjudicator selection process.
    - d. Term limits, if any, of adjudicator.
    - e. Qualifications/requirements of adjudicator(s).
    - f. Selection process of any hearing officers (who, in turn, submit factual findings or recommendations to final adjudicators).
    - g. Quantum of proof necessary for initial disciplinary decision and whether it elevates with the seriousness of the allegation or discipline.
    - h. Standard of appellate review.
    - i. Quantum of proof necessary to uphold Chief's decision and the applicability of national arbitration rules for jurisdictions that rely on arbitration (specifically insofar as the standard elevates with the seriousness of allegation or potential discipline).
    - j. If arbitration is used as appeals process, whether American Arbitration Association rules are used.
    - k. Whether appellant is prohibited from presenting new evidence during appeals process (in other words, is the subject of investigation required to disclose defenses to the charge during the pendency of the investigation rather than raising it during the appeal?)
    - l. Transparency of appeals process
      - i. Are hearings open to the public?
      - ii. Are transcripts or recordings of hearings made available to the public?
      - iii. Length of time record of appeals are retained
    - m. Data of three years of discipline appeal results
  2. An additional portion of the survey will ask questions that are not directly related to the appeals process but are focused on other areas of respective accountability systems:
    - a. Retention time of disciplinary files
    - b. Calculation, extension and/or recalculation of investigatory timelines based on circumstances of notice and other factors.
    - c. Subpoena power of external accountability agencies
    - d. The extent of the use of civilian investigators of alleged officer misconduct
    - e. Whether accountability system rules are applied consistently to all ranks.
    - f. Data for three years of initiated complaints and outcomes of such investigations

3. 21CP anticipates distributing the survey to the jurisdictions that rank in population ten above and ten below Seattle. Those cities are:

|              |               |                  |               |
|--------------|---------------|------------------|---------------|
| San Diego    | San Francisco | Denver           | Nashville     |
| Dallas       | Columbus      | Washington, D.C. | Memphis       |
| San Jose     | Fort Worth    | Boston           | Portland      |
| Austin       | Indianapolis  | El Paso          | Oklahoma City |
| Jacksonville | Charlotte     | Detroit          | Las Vegas     |

4. Following analysis of the survey results, 21CP will identify sites that utilize successful or promising accountability practices related to discipline appeals processes. 21CP will then conduct two to three site visits (3 day duration) at those identified sites. The purpose is to gain a deeper understanding of the characteristics of the appeals process in establishing benchmarks for the subsequent analysis.

#### Accountability System Analysis

**Purpose:** Conduct an analysis of the current system, as compared to how the system was designed, and identify areas of improvement in the accountability system, including the discipline appeals process. The analysis will be informed by practices in other jurisdictions described in the survey and site visits section.

**Approach:** The proposed analysis of the present accountability system will follow a multiphase process.

1. Identify the current structure and operations of the Seattle accountability system, with specific focus on discipline appeals, and arbitration. This process will include analysis of City of Seattle data, document reviews and stakeholder interviews.
2. Using documents, such as SPD and oversight agency policies and the Inspector General's Disciplinary Process Map, as a starting point, map all elements of the grievance and arbitration processes to applicable laws, rules, policies and collective bargaining agreements.
3. Analyze the identified elements of the processes for gaps between the intended design of the system and the present state of the accountability system. The analysis will focus on the following questions.
  - a. Is the system, as it is presently, consistent with the intended design and goals?
  - b. Does the current system result in levels of accountability that ensure constitutional policing?
  - c. Does the system conflict with public and officer safety?

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- d. Does the system appear to achieve the legitimacy necessary to achieve its goals (in terms of objectivity, certainty, perceived fairness, and transparency) as opposed to viable, alternative solutions?
  - e. Is the current mission of each respective component of the accountability system consistent with what was designed? Is there any overlap of missions in the current system?
  - f. Do the entities of the accountability communicate necessary information so that each component of the system can adequately fulfill their respective missions?

### **Deliverables**

21CP will generate a report and recommendations providing the team's findings. The report will describe the types of disciplinary review processes utilized by Seattle and comparable city law enforcement agencies. The report will include a compilation of survey data and analysis of that data to identify both common and promising disciplinary review/appeal practices. Based on the analysis, 21CP will include a Recommended System Improvement Plan for the City of Seattle, including recommendations for policy, procedure, training, and agency protocols.